

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILFRED WILLIS TYREE,

Defendant.

No. CR 13-00119 WHA

**ORDER GRANTING MOTION
TO APPLY FUNDS HELD BY
THE FEDERAL BUREAU OF
INVESTIGATION AND
VACATING JANUARY 7 HEARING**

The government has moved for funds that were seized from defendant at the time of his arrest for bank robbery. Currently, the FBI is in possession of those funds — a total of \$514.83 — and the government now seeks to apply the funds to the outstanding restitution amount that defendant must pay as part of his judgment. To date, that outstanding amount is \$1,322, and defendant has made no payments toward that obligation since being remanded to custody in May 2013. Although Criminal Local Rule 47-2 states that “[a]ny opposition to a noticed motion shall be served and filed not more than 7 days after the motion is filed,” neither defendant nor his attorney has submitted any opposition or response to the government’s motion, even after the government filed and mailed defendant a copy of the motion on November 15, 2013.

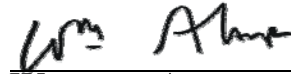
United States v. Mills provides the governing authority here. 991 F.2d 609 (9th Cir. 1993). Specifically, our court of appeals instructed that “the government acquires a lien against [a defendant’s] seized property when a district court issues a valid restitution order.” *Id.* at 612. *Mills* therefore affirmed the district court’s order to apply a defendant’s property to his restitution obligation, where that property was already in the government’s possession. So too

1 here. Because defendant was ordered to pay \$1,322 for restitution, the government acquired a
2 lien against his seized property, such that it can now apply the \$514.83 in the FBI's possession to
3 defendant's restitution debt.

4 The government's motion is therefore **GRANTED**. The \$514.83 currently held by the FBI
5 shall be turned over to the Clerk of the Court for payment of defendant's outstanding restitution
6 obligation. Said funds should be made payable to the United States District Court Clerk, and
7 mailed to the United States District Court Clerk, 450 Golden Gate Avenue, 16th Floor, San
8 Francisco, CA 94102. In addition, the hearing previously set for January 7, 2014 is **VACATED**.

9
10 **IT IS SO ORDERED.**

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12 Dated: December 27, 2013.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE